

Message Text

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ORIGIN STR-07

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FRB-03 H-01 INR-10 INT-05 L-03 NSAE-00 NSC-05
PA-01 AID-05 SS-15 ITC-01 ICA-11 SP-02 SOE-02
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APPROVED BY STR:WBKELLY,JR.
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CUSTOMS:JO'LOUGHLIN
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TO USMISSION GENEVA

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USMTN

E.O. 11652: N/A

TAGS: ETRD, GATT, MTN

SUBJECT: GUIDANCE FOR UPCOMING DISCUSSIONS ON CUSTOMS
VALUATION

REF: GENEVA 6743

1. FOR PURPOSES OF UPCOMING BILATERAL AND PLURILATERAL
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MEETINGS ON CUSTOMS VALUATION DURING THE WEEK OF MAY 8
(REFTEL) MTN DEL IS HEREBY AUTHORIZED TO ATTEMPT TO DEVELOP
WITH OTHER KEY DELEGATIONS (I.E., EC, JAPAN, NORDICS,
CANADA), ON AN AD REFERENDUM BASIS, A BRACKETED NEGOTIATING
TEXT ON CUSTOMS VALUATION. IN DEVELOPING SUCH A TEXT,
DELEGATION SHOULD DRAW ON TPSC 78-46 AND MATERIAL PROVIDED
BELOW.

2. MATERIAL PROVIDED BELOW IN PARAGRAPHS 3-15 REPRESENTS
FURTHER U.S. REFINEMENT OF ARTICLES 1-4 OF EC DRAFT TEXT

AND PRELIMINARY U.S. POSITION ON ARTICLES 8-16 OF EC DRAFT TEXT. U.S. POSITION ON ARTICLES 5-7 OF EC DRAFT TEXT IS STILL THAT REFLECTED IN TPSC 78-46, ALTHOUGH WE BELIEVE THAT OUR OWN DRAFT AND EC REDRAFT OF ARTICLE 6 (REFTEL) PROVIDE SOME ROOM FOR NEGOTIATION. SEE PARAGRAPH 16 BELOW FOR OUR INITIAL COMMENTS ON EC REDRAFT OF ARTICLE 6.

3. ARTICLE 1. SUGGESTED LANGUAGE: THE CUSTOMS VALUE OF

IMPORTED GOODS SHALL BE THE TRANSACTION VALUE, THAT IS, THE PRICE ACTUALLY PAID OR PAYABLE FOR SUCH GOODS IN A SALE FOR EXPORT TO THE COUNTRY OF IMPORTATION, ADJUSTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 7, PROVIDED

--

(A) THAT THE BUYER AND SELLER ARE NOT RELATED OR, IF THEY ARE RELATED, THAT SUCH RELATIONSHIP DID NOT GIVE RISE TO A PRICE DEFICIENCY WITHIN THE MEANING OF ARTICLE 6.

(B) THAT THE TRANSFER OF TITLE OF THE GOODS BEING VALUED IS NOT CONDITIONED ON SOME FACTOR OR CONSIDERATION NOT SUBJECT TO VALUATION.

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(C) THAT PART OF THE PROCEEDS OF ANY SUBSEQUENT RESALE OR OTHER DISPOSAL OF THE GOODS BY THE BUYER WILL NOT ACCRUE DIRECTLY OR INDIRECTLY TO THE SELLER.

4. ARTICLE 2. SUGGESTED LANGUAGE:

(1) IF THE CUSTOMS VALUE OF THE IMPORTED GOODS CANNOT BE DETERMINED UNDER THE PROVISIONS OF ARTICLE 1, THE CUSTOMS VALUE SHALL BE THE TRANSACTION VALUE OF IDENTICAL GOODS FOR EXPORT TO THE SAME COUNTRY OF IMPORTATION SOLD AT OR ABOUT THE SAME TIME AS THE SALE OR OTHER AGREEMENT APPLICABLE TO THE IMPORTED GOODS, SUBJECT OTHERWISE TO THE PROVISIONS OF ARTICLE 1.

(2) FOR PURPOSES OF THIS ARTICLE, IDENTICAL GOODS MEANS:

(A) GOODS WHICH ARE IDENTICAL IN PHYSICAL CHARACTERISTICS WITH, AND WERE PRODUCED IN THE SAME COUNTRY BY THE SAME PERSON AS, THE IMPORTED GOODS, OR, IF NO SUCH GOODS ARE PRODUCED BY THE SAME PERSON, THEN

(B) GOODS WHICH SATISFY THE REQUIREMENTS OF (A) ABOVE, EXCEPT THAT THEY WERE PRODUCED BY ANOTHER PERSON.

(3) IN APPLYING THE PROVISIONS OF THIS ARTICLE, THE TRANSACTION VALUE OF IDENTICAL GOODS WHICH ARE SOLD AT THE SAME OR CLOSEST COMMERCIAL AND QUANTITY LEVELS AS THE IMPORTED GOODS SHALL BE USED AS THE CUSTOMS VALUE.

(4) IF MORE THAN ONE TRANSACTION VALUE IS FOUND UNDER THIS ARTICLE, THE LOWEST SHALL BE USED AS THE CUSTOMS VALUE.

5. ARTICLE 3. SUGGESTED LANGUAGE:
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(1) IF THE CUSTOMS VALUE OF THE IMPORTED GOODS CANNOT BE DETERMINED UNDER THE PROVISIONS OF ARTICLES 1 AND 2, THE CUSTOMS VALUE SHALL BE THE TRANSACTION VALUE OF SIMILAR GOODS FOR EXPORT TO THE COUNTRY OF IMPORTATION SOLD AT OR ABOUT THE SAME TIME AS THE SALE OR OTHER AGREEMENT APPLICABLE TO THE IMPORTED GOODS, SUBJECT OTHERWISE TO THE PROVISIONS OF ARTICLE 1.

(2) FOR THE PURPOSES OF THIS ARTICLE, SIMILAR GOODS MEAN:

(A) GOODS (I) PRODUCED IN THE SAME COUNTRY AND BY THE SAME PERSON AS THE IMPORTED GOODS, (II) SIMILAR TO THE IMPORTED GOODS IN COMPONENT MATERIAL OR MATERIALS AND IN THE PURPOSES FOR WHICH USED AND (III) COMMERCIALY INTERCHANGEABLE WITH THE IMPORTED GOODS; OR, IF NO SUCH GOODS ARE PRODUCED BY THE SAME PERSON, THEN

(B) GOODS WHICH SATISFY THE REQUIREMENTS OF (A) ABOVE, EXCEPT THAT THEY ARE PRODUCED BY ANOTHER PERSON.

(3) IN APPLYING THE PROVISIONS OF THIS ARTICLE, THE TRANSACTION VALUE OF SIMILAR GOODS WHICH ARE SOLD AT THE SAME OR CLOSEST COMMERCIAL AND QUANTITY LEVELS AS THE IMPORTED GOODS SHALL BE USED AS THE CUSTOMS VALUE.

(4) IF MORE THAN ONE TRANSACTION VALUE IS FOUND UNDER THIS ARTICLE, THE LOWEST SHALL BE USED AS THE CUSTOMS VALUE.

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6. ARTICLE 4. SUGGESTED LANGUAGE:

(1) IF THE CUSTOMS VALUE OF THE IMPORTED GOODS CANNOT BE DETERMINED UNDER THE PROVISIONS OF ARTICLES 1, 2, AND 3, THE CUSTOMS VALUE SHALL BE THE TRANSACTION VALUE DETERMINED ON THE PRICE PAID OR PAYABLE FOR SUCH GOODS WHEN SOLD TO PERSONS IN THE COUNTRY OF IMPORTATION WHO ARE NOT RELATED TO THE IMPORTER, WITH ALLOWANCE MADE FOR

--

(A) EITHER THE COMMISSIONS USUALLY PAID OR AGREED TO BE PAID, OR THE ADDITIONS FOR PROFITS AND GENERAL EXPENSES USUALLY MADE, IN CONNECTION WITH SALES IN SUCH COUNTRY OF GOODS OF THE SAME CLASS OR KIND AS THE IMPORTED GOODS:

(B) THE USUAL COSTS OF TRANSPORT AND INSURANCE AND OTHER USUAL COSTS INCURRED WITHIN THE COUNTRY OF IMPORTATION;

(C) WHERE APPROPRIATE, THE COSTS, CHARGES AND EXPENSES REFERRED TO IN ARTICLE 7(2); AND

(D) THE ORDINARY CUSTOMS DUTIES AND OTHER TAXES CHANGEABLE ON SUCH GOODS BY REASON OF THEIR IMPORTATION.

(2) THE CUSTOMS VALUE OF THE IMPORTED GOODS UNDER THE PROVISIONS OF THIS ARTICLE SHALL BE THE TRANSACTION VALUED DETERMINED ON THE PRICE PAID OR PAYABLE AT THE EARLIEST DATE AFTER IMPORTATION BUT BEFORE THE EXPIRATION OF 90 DAYS THEREOF.

(3) IF THE CUSTOMS VALUE OF THE IMPORTED GOODS CANNOT BE DETERMINED UNDER THE PROVISIONS OF THIS ARTICLE THEN, SUBJECT OTHERWISE TO THE PROVISIONS OF THIS ARTICLE, THE LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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CUSTOMS VALUE SHALL BE THE TRANSACTION VALUE OF IDENTICAL GOODS OR, IN THE ABSENCE OF IDENTICAL GOODS, SIMILAR GOODS SOLD IN THE COUNTRY OF IMPORTATION.

(4) FOR THE PURPOSES OF THIS ARTICLE, THE TERMS IDENTICAL GOODS AND SIMILAR GOODS HAVE THE SAME MEANING AS EXPRESSED IN ARTICLES 2 AND 3, RESPECTIVELY.

FYI AS A TACTICAL MATTER, MTN DEL MIGHT WISH TO WITHHOLD PROVIDING U.S. LANGUAGE ON ARTICLE 4 OF EC DRAFT SINCE EC FAILED TO PROVIDE US WITH A REDRAFT OF OUR PROPOSED ARTICLE ON COMPUTED VALUE AND SINCE U.S. POSITION IS STILL TO DELETE ARTICLE 4 OF EC DRAFT. END FYI.

7. ARTICLE 8. BEFORE THE UNITED STATES CAN TAKE A

DEFINITIVE POSITION ON ARTICLE 8 OF EC DRAFT TEXT, WE NEED TO KNOW THE EC'S INTENTIONS WITH REGARD TO THIS ARTICLE. AS A GENERAL PROPOSITION, WE BELIEVE THAT EACH OF THE ITEMS LISTED IN THIS ARTICLE SHOULD NOT BE INCLUDED IN THE CUSTOMS VALUE OF IMPORTED GOODS IF IT IS NOT IN THE PRICE ACTUALLY PAID OR PAYABLE FOR THOSE GOODS AND SHOULD BE INCLUDED IN THE CUSTOMS VALUE IF IT IS IN THE PRICE ACTUALLY PAID OR PAYABLE. IF THE EC AGREES WITH THIS POSITION, IT MIGHT BE BETTER TO COVER THESE ITEMS IN AN EXPLANATORY NOTE. IF THE EC INSISTS ON RETAINING THE ARTICLE, WE CAN ONLY AGREE TO BRACKET IT AT THIS TIME, BUT ALSO BELIEVE IT SHOULD READ AS FOLLOWS: THE FOLLOWING, IF NOT INCLUDED IN THE PRICE PAID OR PAYABLE FOR THE IMPORTED GOODS, SHALL NOT BE

INCLUDED IN THE CUSTOMS VALUE OF GOODS... PLUS POINTS
(A) - (F) OF EC TEXT.

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8. ARTICLE 9. WE ARE UNCLEAR WHETHER THE EC CONTEMPLATES A CUT-OFF DATE FOR REVISION CLAUSES. WE, OF COURSE, HAVE NO PROBLEMS WITH THE IDEA OF REVISION CLAUSES BUT BELIEVE THAT THEIR APPLICATION CAN BE ADEQUATELY DEALT WITH IN EXPLANATORY NOTES. HOWEVER, WE CAN BE FLEXIBLE ON THIS.

9. ARTICLE 10. WE BELIEVE THAT ARTICLE 10 IS REDUNDANT INSOFAR AS THE CONCEPT OF TRANSACTION VALUE IS CONCERNED. THEREFORE, ARTICLE 10 SHOULD BE BRACKETED IN ANY NEGOTIATING TEXT.

10. ARTICLE 11. WE PROPOSE THAT PRESENT EC LANGUAGE BE SUBSTITUTED WITH THE FOLLOWING LANGUAGE: WHERE THE CONVERSION OF CURRENCY IS NECESSARY FOR THE DETERMINATION OF THE CUSTOMS VALUE, THE RATE IN EFFECT ON THE DATE OF EXPORTATION OF THE IMPORTED GOODS SHALL BE USED.

11. ARTICLE 12. WE HAVE NO PROBLEMS WITH EC DRAFT.

12. ARTICLE 13. WE CAN ACCEPT EC DRAFT WITH THE DELETION OF THE FOLLOWING: PROVIDED THAT SUCH REDUCTION WOULD BE FREELY AVAILABLE UNDER SIMILAR CONDITIONS TO ANY OTHER BUYER.

13. ARTICLE 14. THE FOLLOWING PRO MEMORIAM IS NEEDED: THIS ARTICLE REQUIRES FURTHER ELABORATION.

14. ARTICLE 15. THE FOLLOWING PRO MEMORIAM IS NEEDED: IT SHOULD BE PROVIDED IN AN EXPLANATORY NOTE THAT LEGAL INSTRUMENTS SHOULD, INTER ALIA, BE TAKEN TO MEAN BINDING

JUDICIAL AND ADMINISTRATIVE DECISIONS WHICH HAVE A
GENERAL BEARING ON THE INTERPRETATION OF LAWS AND REGU-
LATIONS REGARDING CUSTOMS VALUATION.

15. ARTICLE 16. THE FOLLOWING ADDITION TO ARTICLE 16(2)
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IS NEEDED: (F) THEY ARE MEMBER OF THE SAME FAMILY

16. WE ARE PLEASED THAT THE EC HAS ATTEMPTED TO INCOR-
PORATE OUR IDEAS INTO THEIR REDRAFT OF ARTICLE 6. THEIR
OWN IDEA THAT THE PRICE PAID OR PAYABLE SHOULD BE
ACCEPTED IF THE BUYER AND SELLER ORGANIZE THEIR BUSINESS
IN SUCH A WAY AS TO BE EFFECTIVELY UNRELATED FOR PURPOSES
OF INTERNATIONAL TRADE IS AN INTERESTING ONE THAT RE-
QUIRES FURTHER STUDY. HOWEVER, ALTHOUGH IT IS THEORETI-

CALLY ATTRACTIVE, IT MAY BE DIFFICULT TO ADMINISTER IN
PRACTICE. WE CONTINUE TO BELIEVE THAT, IN THE TESTS
USED TO DETERMINE THE ACCEPTABILITY OF RELATED PARTY
TRANSACTIONS, THE PRICE SHOULD ONLY HAVE TO COMPARE
FAVORABLY WITH AND SHOULD NOT REPEAT NOT HAVE TO BE LOWER
THAN THE PRICE SET OUT IN ANY ONE OF THE TESTS.

17. WE AGREE WITH MTN DEL THAT, IF WE ARE UNABLE TO
MAKE FURTHER PROGRESS WITH EC ON MAY 9, WE SHOULD STILL
PRESENT OUR IDEAS TO PLURILATERAL GROUP ON MAY 10-12
TO FACILITATE THE DEVELOPMENT OF A VIABLE NEGOTIATING
DOCUMENT. CHRISTOPHER

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<< END OF DOCUMENT >>

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